

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 14, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Mary Voelker
Walter Tarmann

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Nathan Rislov, representative of petitioner, BA04:020
Paul Fix, petitioner, BA04:019
Sandra Murray, petitioner, BA04:016
Ken Murray, petitioner, BA04:016
Carla Mathews-Graham, petitioner, BA04:018
Bruce Graham, petitioner, BA04:018
Phil Foster, builder, BA04:018
John & Karleen Wilde, petitioner, BA04:021
Paul & Karen Stirmel, petitioners, BA04:022
Don Rislov, representative of petitioner, BA04:020

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew	<i>I move we approve the Summary of the Meeting of March 24, 2004, subject to one correction. In the Summaries of Previous Meetings, it states that Ms. Voelker abstained. The minutes shall include that the reason Ms. Voelker abstained was because she was absent from the March 10, 2004 meeting.</i>
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The motion was seconded by Mr. Tarmann and carried unanimously.

NEW BUSINESS:

BA04:016 SANDRA AND KEN MURRAY

Ms. Voelker

I move to approve the request per the staff recommendations and reasons set forth in the staff report, with the following modifications to the staff recommendations and reasons, approving the accessory structure near the lake. Condition No. 2 of the staff report shall change to read, "The deck near the shore shall be removed prior to January 1, 2005. The area shall be re-vegetated immediately after removal of the deck." The reasons shall eliminate any references to the removal of the accessory structure near the lake. In addition, a sentence shall be added to the reasons stating, the approval as conditioned by the Board is consistent with decisions made on similar variance requests.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval with the following conditions:

- 1.) Prior to the issuance of a zoning permit, a complete set of scaled floor plans for the addition and an elevation rendering of the roadside of the residence must be submitted to the Planning and Zoning Division staff for review and approval. The height of the residence in the location of the addition shall not exceed 35 ft., measured from the grade at the centerline of the road to the average between the eave and peak of the roofline of the residence.
- 2.) The accessory building and deck near the shore shall be removed prior to January 1, 2005. The area shall be re-vegetated immediately after removal of said structures.
- 3.) The three lots must be combined by a Certified Survey Map to eliminate existing lot lines. The Certified Survey Map would need to be approved by the Town of Summit and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit for the addition.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The existing residence is severely non-conforming to the north lot line; however, the existing structure is substantial in size and in good repair. The petitioner's request is minor in scope and will include replacing a flat roof prone to water damage with a sloping roof. In addition the variance from the floor area ratio provision is significantly reduced with the removal of the non-conforming accessory building near the shore. The request as conditioned will not adversely affect the surrounding property owners or the lake and would not be contrary to the public interest and in fact, with the removal of the near shore structures, would improve the natural resources and general desirability of the neighborhood. Therefore, the proposal as conditioned is in conformance with the purpose and intent of the Ordinance.

BA04:018 LEMEL HOMES (Bruce Graham-Owner)

Mr. Tarmann

I move to approve the request per the staff recommendations and reasons set forth in the staff report, with the following modifications to the staff recommendations and reasons, approving the accessory structure near the 100-yr. floodplain on the east side of the property and to allow appurtenances on the lakeside of the proposed residence. Condition No. 1 of the staff report shall change to read, "The proposed residence and attached garage shall be located no closer to the lake or 100-yr. floodplain than as shown on the survey, with 2 ft. overhangs. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the lake and 100-yr. floodplain as the overhangs exceed two (2) ft. in width. Any appurtenances including decks and stairways can encroach up to 75 ft. from the shoreline and 100-yr. floodplain of Lac LaBelle Lake on the west side of the proposed residence. Condition No. 5 of the staff report shall change to read, "The non-conforming shed located near Lac LaBelle Lake must be removed prior to the issuance of a zoning permit for the new single-family residence and attached garage.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval with the following conditions.

1. The proposed residence and attached garage including any appurtenances including decks shall be located no closer to the lake or 100-yr. floodplain than as shown on the survey, with 2 ft. overhangs. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the lake and 100-yr. floodplain as the overhangs exceed two (2) ft. in width.
2. The proposed residence and attached garage must be located at least 7.8 ft. from the side lot lines and any decks including stairways and any other appurtenances must be located at least 5 ft. from the side lot lines.
3. There shall be no floor located below the 100-yr. floodplain elevation and the 1st floor elevation shall be at a minimum of 855.6 ft.
4. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. The two non-conforming sheds must be removed prior to the issuance of a zoning permit for the new single-family residence and attached garage.
6. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and any decking, if proposed, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

7. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
8. There shall be no grading activities or filling within the 100-yr. floodplain, with the exception of normal driveway construction.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioner's request, with the recommended conditions, is a reasonable request, since a variance would be required to obtain reasonable use of the property due to the shoreline on the west side of the property and the 100-yr. floodplain and wetland on the east side of the property. As conditioned, there will be ample area for stormwater runoff filtration before entering the floodplain and wetland. The approval, with the recommended conditions, would allow the petitioner to construct a reasonably sized residence with complete conformance with the shore setback and compatible with adjacent residences. Therefore, the proposal with the recommended conditions is within the spirit and intent of the Ordinance.

BA04:0019 PAUL AND LISA FIX

Mr. Schultz

I move to approve the request per the staff recommendations in the staff report, with the following modifications to the staff conditions and reasons, approving the 12 ft. x 24.2 ft. addition to the detached garage. Condition No. 1 shall reflect the accessory building floor area ratio including the garage addition and the garage addition shall be restricted to the proposed size Condition No. 2 shall be removed. Condition No. 3 shall add the offset requirements of the addition to the detached garage. Conditions No. 4, 5 and 6 shall include the addition to the detached garage. The reasons shall change to read, "Approval of the request, with the recommended conditions, allows the petitioners additional boat storage area on the property while not compromising the spirit and intent of the Ordinance. There are several boathouses on nearby lots with similar lot sizes. The existing detached garage is comparable in to other recently constructed detached garages in the neighborhood, however the proposed addition to the detached garage is within floor area ratio and open space requirements and complies with all offset and setback requirements. The proposal should be treated as a special exception rather than a variance since a new structure could be located in the same location without the benefit of a

variance. Therefore, the petitioner does not have to prove he or she does not have reasonable use of the property without the proposal. Therefore, the approval of the petitioner's request as proposed maintains the purpose and intent of the Ordinance."

The motion was seconded by Ms. Voelker and carried with 4 yes votes. Mr. Tarmann voted against the motion.

The staff's recommendation was for approval with the following conditions.

- 1.) The boathouse shall not exceed 240 sq. ft in size, resulting in 6% total accessory building floor area ratio. All other boathouse provisions must be complied with.
- 2.) The existing garage shall not be extended.
- 3.) The proposed boathouse must be located at least 5.4 ft. from the side lot lines and 5 ft. from the lake, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines and lake.
- 4.) Prior to the issuance of a zoning permit, a complete set of building plans for the boathouse, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 5.) Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed boathouse, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 6.) If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed boathouse does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. **No retaining walls are permitted.**

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the request, with the recommended conditions, allows the petitioners additional boat storage area on the property while not compromising the spirit and intent of the Ordinance. There are several boathouses on nearby lots with similar lot sizes. The existing detached garage is comparable in size to other recently constructed detached garages in the neighborhood. Adding 12 additional feet to the northwest would create a much larger garage than others in the area and could set a precedence for larger proposed detached structures on nearby properties, which could impact the permitted size of future proposed additions to residential structures giving the detached structures a more prominent appearance than the principal structure. The existing garage is large enough for 2 vehicles and additional storage. The approved proposal, with the above conditions, would allow the petitioners reasonable use of their property, while maintaining the purpose and intent of the Ordinance.

BA04:020 JERRY K. LYONS

Mr. Bartholomew

I make a motion to adopt the staff's recommendation for the reasons as stated in the Staff Report.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Granting a variance for a new detached garage would be contrary to the public interest and would not protect the natural resource base and would not be within the spirit and intent of the Ordinance. It has not been demonstrated, as required for a variance, that denial of the requested variance would cause the owner to experience an unnecessary hardship. The owner has not shown that compliance with the strict letter of the restrictions governing area and setbacks would unreasonably prevent the owner from using the property for a permitted purpose, or that rendering greater conformity with such restrictions would be unnecessarily burdensome. The petitioner was issued a variance in 1999 to construct a reasonably sized residence and attached garage. The current proposal would allow a structure closer to the lake and floodplain than the approved variance and its location would make it difficult for the owner to replace the residence in a more conforming location, when it is likely the owner or future owners will request to make significant improvements to or reconstruct the residence. The residence is currently non-conforming to several provisions as mentioned above. In addition, allowing a new structure only 7 ft. from the shoreline would negatively impact the natural resources and water quality of the Bark River. Stormwater runoff from the impervious surfaces would runoff into the river with very little to no filtration. Hardships should not be financial or economic in nature, therefore, the variance approval in 1999 allows the petitioner reasonable use of the property and allows a new structure that conforms to the requirements to the greatest extent possible on the extremely non-conforming lot. Therefore, the approval of this request would not be conformance with the purpose and intent of the Ordinance.

BA04:021 JOHN AND KARLEEN WILDE (Calvin Akin-Owner)

Mr. Ward

I make a motion to approve the petitioners request subject to the following conditions: 1.) The residence, attached garage and any appurtenances must be located at least 50 ft. from the wetland. The natural grade in the location of the proposed residence and attached garage must be at least 3 ft. above the highest elevation of the wetland. 2.) Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and any decking, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. 3.) No changes in the existing grade shall be made, with the exception of the area to be used as a footprint for the proposed structures. The reasons for approval are: The developer went through the necessary process with the Town and County and the building envelope included area within the 75 ft. setback. If the elevation stays the same, there will be a significant change in elevation from the wetland to the proposed structures. The proposal complies with the proposed Ordinance amendments allowing a structure to be located 50 ft. from a 100-yr. floodplain and/or wetland if the natural grade at the location of the proposed structure is located at least 3 ft. above the 100-yr. floodplain or wetland elevation. Therefore, the proposal as requested, does not compromise the spirit and intent of the Ordinance.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows

Granting a variance on the above-mentioned lot would be contrary to the public interest and would not be within the spirit and intent of the Ordinance. It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. The owner has not shown that compliance with the strict letter of the restrictions governing area and setbacks would unreasonably prevent the owner from using the property for a permitted purpose, or that rendering greater conformity with such restrictions would be unnecessarily burdensome. There is a significant building envelope available on the property without encroaching on any setbacks. The petitioner is proposing to construct a residence they have designed that does not best fit the conditions of the lot. A similar size home could be constructed either further from the road, or a two-story residence could be constructed decreasing the necessary footprint to comply with the subdivision requirements. In conclusion, a sizable single-family residence and two-car garage with a side entry could be constructed in the permitted 63 ft. +/- x 155 ft. +/- building envelope. Therefore, the approval of this request would not be conformance with the purpose and intent of the Ordinance.

BA04:022 PAUL AND KAREN STIRMEL

Mr. Schultz

I make a motion to adopt the staff's recommendation with the conditions and for the reasons as stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval with the following conditions.

1. A detailed cost estimate of all work to be completed to the residence must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
2. Prior to the issuance of a zoning permit for the proposed decks, a stake-out survey showing the location of the proposed decks must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. Any decks and or patios including stairways must be located at least 30 ft. from the shoreline and must be located on the northwest or southwest sides of the residence.
3. The residence must not increase in size and the new overhangs must not exceed 2 ft. in width.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioner's request, with the recommended conditions, is reasonable, since the existing road, shore, and 100-year floodplain setbacks of the existing structure are reasonable, considering the minimal land area between the road and the shore on the subject property. The petitioner has received previous approvals to maintain and increase the longevity of the lifetime of the existing residence. Replacing a wall and the roof will improve the structural stability of the residence and improve its value. Since the petitioner is not proposing to increase the size of the structure other than constructing decks, which extend no closer to the shore than the existing residence, and a reasonably sized residence could not be relocated in a more conforming location, the approval of this request, with the recommended conditions, is within the spirit and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

ADJOURNMENT:

Mr. Bartholomew

I move we adjourn this meeting at 9:45 p.m.

The motion was seconded by Mr. Tarmann and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment